

House Republican Press Release

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Is Your Castle Safe From the Kelo v. New London Decision?



By State Representative John J. Ryan

Yet another topic that has dominated the recent news stories will prevent us from continuing to summarize the topics addressed in this year's legislative session, because not a day has gone by in the last weeks without the term 'eminent domain' coming up. By now, nearly everyone must know that the U.S. Supreme Court closed out this year's term with the controversial decision in *Kelo v. New London* (and how often does a case from Connecticut become the most discussed case heard by our Supreme Court?); what are the implications for your state government ?

First, please be aware that 'eminent domain', the government's ability to take private property for some public purpose, is hardly a new topic. For many years, it has been recognized that government, be it local, state or Federal, could not accomplish many of its purposes in building roads, schools, police departments or sewage treatment plants, all unquestionably valid purposes of government, unless there was some procedure to acquire the locations for those functions. Assorted eminent domain laws have been around for a long time, and the argument has rarely been about the appropriate public purpose of the activity, and usually is about the fair compensation for the property is being taken (sometimes referred to as 'condemnation') and the procedures for determining those values. And in recent years, eminent domain, without a great deal of uproar or discussion, has been expanded to the topic of acquiring slum properties, or 'blighted' neighborhoods, to effectuate the provision of better, safer housing for residents.

The *Kelo* case, however, did not involve a site needed for a new community college, for example, but started when the City of New London, in an effort to revitalize its economically distressed downtown and waterfront areas, authorized its development agency to carry out a plan intended to create jobs and generate taxes, and accordingly proceeded to take by eminent domain fifteen residential properties (most owner-occupied), and none were blighted or deteriorated buildings. The land would then be turned over to a private developer for uses like office space or a marina. The issue to be decided in the *Kelo* case therefore was whether eminent domain for the sole purpose of economic development was a proper 'public purpose'; or, as I put it when discussing this issue with Jim Murphy on Cablevision News 12, can the government take a perfectly good row of houses in a neighborhood to give the area to a developer to build a shopping mall?

As you must know from all of the media hoopla, the Court in a 5-4 decision defined 'public purpose' broadly, and allowed New London to proceed with its plan. Most importantly for the purposes of this discussion, however, the Court also ruled that states can properly restrict that eminent domain power and limit its uses. (Apparently some eight states do not allow eminent domain use for economic development, unless it is the blight elimination variety). So what has your Connecticut state legislature been doing? One would think from the newspaper accounts that we have yet another governmental crisis that has instantly, without any warning, pounced upon the State? Hardly.

You are probably are aware that cases take years to wind their way through the court system if they are eventually to be heard in the U.S. Supreme Court; indeed, this New London development plan started in 2000, and the litigation began shortly thereafter, so that this issue is not a surprise in Hartford. You probably do NOT know, that this issue could have already been addressed by the General Assembly, because House Republican Leader Bob Ward had a bill to address this very topic in this session, but the bill died in the Judiciary Committee (the perils of being in the legislative minority!).

So when the Supreme Court's decision was announced near the end of this year's regular session, there was not a 'live' bill that had gone through the process and ready for action, but that did not mean the legislature was powerless to act. Indeed, Mr. Ward attempted (with the support of most Republican legislators) to have his original bill acted upon as an amendment, which could have been done in our June Special Session, but the majority leadership did not want to act on this topic this year.

Inasmuch as the annual Veto Session is now scheduled for Monday, July 25, that would give us another opportunity to act on this issue, and you may have noticed that Governor Rell supports addressing this important issue sooner rather than later. But comments from Democrat legislative leaders have made it clear that this topic is very likely to be put off until the next regular session commencing next February, where a barrage of public hearings and press conferences can be expected. So while it is unlikely that eminent domain will be seizing your abode in Darien or Rowayton in the next few months, this is just one more topic that was not addressed in this year's General Assembly sessions.

Please feel free to contact me with your concerns and issues. As your state representative, it is my job, and my priority to represent you and to make sure that your needs and concerns are addressed at the capitol. You can write to me at Room 4200, Legislative Office Building, Hartford, CT 06106-1591, send me e-mail at John.Ryan@housegop.state.ct.us or call my office toll-free at 1-800-842-1423.